



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2011-0100; FRL-9914-64-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana – Air Quality, Subchapter 7, Exclusion for De Minimis Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Environmental Protection Agency (EPA) is proposing to correct final rules pertaining to the State of Montana's State Implementation Plan (SIP). On February 13, 2012, EPA took final action to partially approve and partially disapprove SIP revisions and new rules as submitted by the State of Montana on June 25, 2010 and May 28, 2003. EPA subsequently discovered errors in our February 13, 2012 final action related to the "incorporation by reference" materials and the associated regulatory text that inadvertently reversed portions of our July 8, 2011 final action. EPA is proposing to correct those errors with today's action; and we are only seeking comments on these corrections. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2011-0100, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- E-mail: dobrahner.jaslyn@epa.gov.
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- Hand Delivery: Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket EPA-R08-OAR-2011-0100. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that

you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I.

General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air Program, EPA, Region 8, Mail Code 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-6252, dobrahner.jaslyn@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iii) The initials SIP mean or refer to State Implementation Plan.
- (iv) The words State or Montana mean the State of Montana, unless the context indicates otherwise.

Table of Contents

- I. General Information
- II. Background
- III. What Action is EPA Taking?
- IV. Statutory and Executive Orders Review

I. General Information

What Should I Consider as I Prepare my Comments for EPA?

1. Submitting Confidential Business Information (CBI). Do not submit CBI to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40

CFR part 2.

2. Tips for preparing your comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date, and page number);
- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats;
and
- Make sure to submit your comments by the comment period deadline identified.

3. Scope of comments. Although EPA is including the entire regulatory text in this action and the associated proposed incorporation by reference materials (with proposed corrections) so that the public can see the corrections, EPA is only seeking comment on the proposed corrections that are described in this document. Our prior documents provided an opportunity for the public to review and comment on our partial approval and partial disapproval actions regarding these

Montana State Implementation Plan regulations. Therefore, we will only address comments regarding the proposed corrections described in this document.

II. Background

In our rule published on February 13, 2012 (77 FR 7531), EPA took final action to partially approve and partially disapprove SIP revisions and new rules as submitted by the State of Montana on June 25, 2010 and May 28, 2003. On page 7534, third column, under the regulatory text in 40 CFR 52.1370(c)(72)(i) Incorporation by reference, paragraph (A), EPA inadvertently incorporated by reference all of Administrative Rules of Montana (ARM), 17.8.740, Definitions. We are proposing to amend the regulatory text in 40 CFR 51.1370(c)(72)(i)(A) to specify that EPA only approved the phrase “, except when a permit is not required under ARM 17.8.745” in ARM 17.8.740(8)(a) and the phrase “, except as provided in ARM 17.8.745” in ARM 17.8.740(8)(c). Therefore, we propose that the regulatory text in 40 CFR 51.1370(c)(72)(i)(A) read as follows: “Administrative Rules of Montana, 17.8.740, Definitions, ARM 17.8.740(8)(a) and (c), respectively, the phrases ‘, except when a permit is not required under ARM 17.8.745’ and ‘, except as provided in ARM 17.8.745’; 17.8.743, Montana Air Quality Permits – When Required, (except for the phrase in 17.8.743(1)(b), ‘asphalt concrete plants, mineral crushers, and’, and 17.8.743(1)(c)); and 17.8.764, Administrative Amendment to Permit, effective 12/27/2002.”

This proposed correction is consistent with: (1) the preamble of our February 13, 2012 final rule (77 FR 7531, 7534); and (2) the July 8, 2011 final rule (76 FR 40237) and associated regulatory text found in 40 CFR 52.1370(c)(70)(i)(B)(2) where we disapproved the phrase in ARM 17.8.740(2) “includes a reasonable period of time for startup and shakedown and” and the

definitions in ARM 17.8.740(10) and (14), “Negligible risk to the public health, safety, and welfare and to the environment” and “Routine Maintenance, repair, or replacement,” respectively. We also confirm that our approval of the phrase “unless the increase meets the criteria in ARM 17.8.745 for a de minimis change not requiring a permit, or” in 17.8.764(1)(b) of our July 8, 2011 final rule (76 FR 40237) is accurate, while the same phrase in the preamble of the July 8, 2011 and February 13, 2012 final rules is incorrect.

In this action, EPA is also proposing to correct the associated IBR material for our February 13, 2012 (77 FR 7531) rule by striking out the aforementioned phrases (ARM 17.8.740(2), ARM 17.8.743(1)(c)) and two definitions (ARM 17.8.740(10), ARM 17.8.740(14)) that were inadvertently included in the IBR SIP material from the State’s May 28, 2003 submittal; and the proposed corrected IBR material appears in the docket for this action.

For more detailed information regarding these February 13, 2012 and July 8, 2011 actions, see 77 FR 7531 and 76 FR 40237.

III. What Action is EPA Taking?

EPA is proposing to amend the text in 40 CFR 51.1370(c)(72)(i)(A) to read as follows: “Administrative Rules of Montana, 17.8.740, Definitions, ARM 17.8.740(8)(a) and (c), respectively, the phrases ‘, except when a permit is not required under ARM 17.8.745’ and ‘, except as provided in ARM 17.8.74’; 17.8.743, Montana Air Quality Permits – When Required, (except for the phrase in 17.8.743(1)(b), ‘asphalt concrete plants, mineral crushers, and’, and 17.8.743(1)(c)); and 17.8.764, Administrative Amendment to Permit, effective 12/27/2002.”

IV. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies

with the provisions of the Act and applicable federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting federal requirements and disapproves other state law because it does not meet federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999); is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements

would be inconsistent with the CAA; and,

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Date: July 15, 2014.

Shaun L. McGrath,
Regional Administrator,
Region 8.

[FR Doc. 2014-18492 Filed 08/04/2014 at 8:45 am;

Publication Date: 08/05/2014]